

GUIDELINES FOR SECONDARY EMPLOYMENT

To implement the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., the following guidelines are established to govern secondary employment situations. These guidelines are applicable to all State officers and employees and special State officers and employees in the Executive Branch of State government.

A department head may allow officers or employees in the department, whether classified or not, to hold outside employment if there is no statutory or Code of Ethics prohibition. In doing so, several policies and procedures for holding outside governmental or non-governmental employment, compensated or uncompensated, should be observed.

A. Outside Government Position

With regard to whether a State officer or employee may hold another public office or position, compensated or not, it must initially be determined whether the two positions are compatible or in some way conflict. The two positions should be examined to determine whether any relationship exists between them. If no relationship does exist, then the positions are compatible; if a relationship does exist, the positions must be more closely scrutinized to determine if the relationship is a conflicting one. The following questions should be asked in making this decision:

1. Do the two positions deal with the same general area?
2. Are the duties and responsibilities of the two positions the same or similar?
3. Does one position fall under the control or supervision of the other?
4. Does the department in which the employee works have control or jurisdiction over the outside position or decisions made there?
5. Does the department in which the employee works provide any funding, directly or indirectly, to the outside position?
6. Will decisions or guidelines made by the person in one position influence or appear to influence actions taken in the other position?

7. Are there individuals, organizations, or entities that can reasonably be expected to deal with the State employee in both positions?

8. Will the outside position require the person to represent any entity other than the State before or against any State agency?

If the answer to any of the above questions is yes, the two positions may be incompatible or may conflict. Under such circumstances, an opinion should be requested from the Executive Commission on Ethical Standards.

After a determination is made that two positions are compatible, problems may still arise concerning conflicts of time. The outside government position may require attendance at meetings or performance of other activities during the employee's normal State working hours. Because many local government agencies depend on and require part-time services by officials who may be employed elsewhere and the holding of such a part-time position is in the public interest, the department head may in his or her discretion allow an official or employee to hold a compatible part-time outside governmental position even though the working hours may sometimes conflict.

An employee should not, however, be allowed to hold any other position or occupation where the time devoted to it detracts from his or her performance or efficiency in the State position.

Secondary employment that requires the employee to spend time away from his or her State job must be reviewed and approved by the employee's supervisor as to the time requirements.

When the employee requires any leave time from the State position for activities related to the outside governmental position, he or she should generally be required to make these hours up on a regular documented basis, where feasible. Where this is not feasible or suitable, the State employee should not receive compensation from the State for the time missed. This is especially important where the State employee is receiving compensation from the outside position. The employee should be allowed, of course, to use earned vacation time or administrative leave time if he or she so chooses. Arrangements for adjusting work hours or compensation should be made in accordance with applicable departmental and/or Department of Personnel procedures.

The conduct of business related to the outside governmental position during State time using State facilities should be strictly limited. A State employee may be allowed to receive or make an occasional phone call or to handle correspondence on occasion during State working hours using State facilities but should not be allowed to routinely use a State office for the conduct of outside business.

B. Outside Non-Governmental Position

In determining whether a State officer or employee may hold outside non-governmental employment, compensated or not, the same basic questions must be asked as are asked for outside governmental positions to assess the compatibility of the two positions.

If no incompatibility or conflict of interest exists, a determination must be made concerning conflicts of time. Generally, a State employee should not be allowed to hold outside employment which will conflict with State working hours. The distinction as to conflicts of time between the holding of an outside governmental position and an outside non-governmental position is that the public interest is generally served by the former more than by the latter. Therefore, if some State purpose is being served by the non-governmental employment or if the outside activity enhances the State employee's ability to perform State duties and responsibilities, a State officer or employee may be permitted to hold outside employment which infringes upon State working hours, but not so much as to detract substantially from performance or efficiency in the State position. If no State purpose is being served by the non-governmental outside employment, then no infringement of State working hours should be permitted.

When the employee requires any leave time from his State position for activities related to his outside non-governmental position, the employee should either make-up the hours or not receive State compensation for time missed, as outlined above.

The conduct of business related to the outside non-governmental position during State time using State facilities should be strictly limited, as outlined above.

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